

# Russia/Eurasia

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This article reviews legal developments in Russia and the Eurasia region during 2012.<sup>1</sup>

## I. International Trade and Intellectual Property

### A. WTO ACCESSION

On August 22, 2012, after almost two decades of negotiations, Russia acceded to the World Trade Organization (WTO).<sup>2</sup> The WTO's main function is to enforce the rules of the international trading system, which it does by promoting trade liberalization; providing the framework for contractual obligations between member-states; acting as a forum for trade negotiations and for settling trade disputes between member-states; and providing a supervisory mechanism by which members may enforce trade agreements.<sup>3</sup> The WTO has created a large body of case law, ensuring internal consistency and providing predictability for future disputes. Russia's accession was a major step in its integration into the international trade system.

WTO proponents argued that membership would make Russia more attractive to foreign investors, provide greater access to world markets for Russian products, and provide

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1. For events from the region during 2011, see Andrey Y. Astapov et al., *Ukraine*, 46 INT'L LAW. 581 (2011).

2. *Accession Status: Russian Federation*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_russie\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_russie_e.htm) (last visited Jan. 28, 2013).

3. *10 Things The WTO Can Do*, WORLD TRADE ORG., [https://www.wto.org/english/thewto\\_e/whatis\\_e/t0hi\\_e/t0hi00\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/t0hi_e/t0hi00_e.htm) (last visited Jan. 28, 2013).

more job opportunities for Russians.<sup>4</sup> Many Russian industries will benefit from foreign investment through new links to multinational insurance providers, banking services, telecommunications, and distribution services. In return, these benefits establish a more liberal trade environment due to Russia's legally binding commitment to conform to WTO rules and open its foreign trade and investment regimes to the scrutiny of WTO members.<sup>5</sup>

Opposition to joining the WTO appeared mainly in the form of political rhetoric from those who fear that Russia is succumbing to the influence of the United States and the West.<sup>6</sup> Certain industries, such as the agriculture sector and automobile manufacturers, opposed accession because free trade would create stiffer competition and negatively affect domestic production when these industries lose the national protectionism they have historically enjoyed.<sup>7</sup>

## B. INTELLECTUAL PROPERTY

WTO members must ensure that their laws offer fair and equitable enforcement procedures to permit actions against intellectual property (IP) infringement, including injunctions, damages, and, in some cases, criminal penalties. The Agreement on Trade-Related Aspects on Intellectual Property Rights (TRIPS)<sup>8</sup> requires transparency between members, mandating the publication of IP-related laws, regulations, judicial decisions, and administrative rulings. Russia therefore is obligated to bring its IP laws and practices into compliance with WTO standards. Although Russia has taken steps to amend its IP laws, it has yet to address concerns raised by WTO members in Russia's Pre-Accession Report, including the need to develop technical means of protection and to monitor collective management organizations.<sup>9</sup>

Some Russian IP laws already meet international standards. The Civil Code protects authors' rights (copyrights) and follows the "first-to-file" patent priority system, consistent with most of the world. It also protects patent rights to inventions, utility models, industrial designs, agricultural advancements, and animal breeding, recognizes "know-how" (similar to U.S. trade secrets), and protects trademarks and service marks. But crit-

4. See, e.g., Andrey Goltsblat, *WTO Will Help Russia Become a Global Leader*, MOSCOW TIMES (Aug. 30, 2012), <http://www.themoscowtimes.com/opinion/article/wto-will-help-russia-become-a-global-leader/467311.html>.

5. *Id.*

6. See, e.g., 'It's a Trap!' – Russian Leftists Hold Protests Against WTO Entry, RUSS. TODAY (July 3, 2012, 5:43 PM), <http://rt.com/politics/leftists-hold-protests-entry-296/>.

7. *Id.*

8. The TRIPS Agreement is Annex 1C of the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh, Morocco, Apr. 15, 1994. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, available at [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm).

9. See Panel Report, *Report of the Working Party on the Accession of the Russian Federation*, WT/ACC/RUS/70, at 315-30 (Nov. 17, 2011), available at [http://docsonline.wto.org/imrd/gen\\_searchResult.asp?RN=0&searchtype=browse&q1=%28+%40meta%5FSymbol+WT%FCACC%FCRUS%FC%2A%29+&language=1](http://docsonline.wto.org/imrd/gen_searchResult.asp?RN=0&searchtype=browse&q1=%28+%40meta%5FSymbol+WT%FCACC%FCRUS%FC%2A%29+&language=1).

ics note that although Part IV of Russia's 2008 Civil Code<sup>10</sup> improved IP protections, enforcement is severely lacking due to the weak sanctions for IP violations.

In December 2011, in order to strengthen protection of IP rights and adapt to WTO and international standards, the Duma ratified two laws leading to the formation of a specialized Court on Intellectual Property Rights (IPR Court),<sup>11</sup> which is expected to begin hearing cases by February 1, 2013. The IPR Court will handle disputes regarding grants and validity of IP rights when either the Federal Service for Intellectual Property (ROSPATENT) or the Federal Antimonopoly Service is a party to the dispute. The IPR Court will also handle requests for early cancellation of a trademark due to non-use (currently under the jurisdiction of the Arbitrazh (Commercial) Courts). The IPR Court will not consider copyright—or similar—protection issues, which remain within the scope of Russia's general jurisdiction courts. As a cassation court, the IPR Court will consider whether any legal errors occurred in cases that were decided by a panel of the IPR Court in the first instance, as well as infringement disputes judged by Arbitrazh Courts. Cassation decrees of the IPR Court will be subject to review by the Supreme Arbitrazh Court of the Russian Federation.

## C. DRAFT LEGISLATION

Proposed amendments to about 600 articles of the Civil Code<sup>12</sup> passed a first hearing before the Duma on April 27, with a second hearing anticipated in late 2012 or early 2013. These amendments are designed to strike a balance between stimulating the development and utilization of new technologies and protecting the interests of right-holders, with the most significant changes focusing on mass infringement via the Internet or telecommunications networks.<sup>13</sup> General IP-related amendments include the licensing and assignment

10. See Федеральный Закон № 231-ФЗ от 18.12.2006

О введении в действие части четвертой Гражданского кодекса Российской Федерации [Federal Law No. 231-FZ of December 18, 2006 on Putting into Force Part IV of the Russian Civil Code], ROSSIYSKAYA GAZETA [ROS. GAZ.] Dec. 18, 2006, p. 25, amending GRAZHDANSKII KODEKS ROSSIYSKOI FEDERATISII [GK RF] [Civil Code] pt. 4 (Russ.) [hereinafter GK RF pt. 4].

11. Federal'nyy zakon Rossiyskoy Federacii ot 6 dekabrya 2011 g. N 4-FKZ "O vnesenii izmenenij v Federal'nyy konstitucionnyy zakon "O sudebnoj sisteme Rossiyskoy Federacii" i Federal'nyy konstitucionnyy zakon "Ob arbitrazhnykh sudah v Rossiyskoy Federacii" v svyazi s sozdaniem v sisteme arbitrazhnykh sudov Suda po intellektual'nym pravam" [Federal Law of the Russian Federation from December 6, 2011 N 4-FKZ "On Amendments to the Federal Constitutional Law" On the Judicial System of the Russian Federation "and the Federal Constitutional Law" On Arbitration Courts in the Russian Federation "In Connection With the Creation of the System of Arbitration Courts for Intellectual Property Rights"], ROS. GAZ. Dec. 9, 2011; Federal'nyy zakon Rossiyskoy Federacii ot 8 dekabrya 2011 g. N 422-FZ "O vnesenii izmenenij v otdel'nye zakonodatel'nye akty Rossiyskoy Federacii v svyazi s sozdaniem v sisteme arbitrazhnykh sudov Suda po intellektual'nym pravam" [Federal Law of the Russian Federation from December 8, 2011 N 422-FZ "On Amendments to Certain Legislative Acts of the Russian Federation in Connection With the Creation of a System of Arbitration Courts for Intellectual Property Rights"], ROS. GAZ. Dec. 10, 2011.

12. Proekt Federal'nogo Zakona "O vnesenii izmenenij v chasti pervuju, vtoruju, tret'ju i chetvertuju Grazhdanskogo kodeksa Rossiyskoy Federacii, a takzhe v otdel'nye zakonodatel'nye akty Rossiyskoy Federacii [Draft Federal Law On Amendments to the First, Second, Third and Fourth Parts of the Civil Code of the Russian Federation and Certain Legislative Acts of the Russian Federation], ROS. GAZ. Apr. 8, 2012 [hereinafter Draft Amendments].

13. See *Ministr Justitsii A. Kononov Rasskazal o Popravkah v Grazhdanskij Kodeks Rossiyskoy Federacii* [Justice Minister Alexander Kononov Discussed the Amendment to the Civil Code of the Russian Federation], MINISTRY OF JUSTICE (Apr. 2, 2012), <http://www.minjust.ru/node/2146>; see also *Popravki Po Intellektual'noj Sobstvennosti*

of IP rights, registration of utility patents, trademark registration, the right to claim compensation instead of damages in cases of infringements of patent and utility model rights, and other provisions including:

### 1. *Copyright Protection for Internet Sites*

Amended Article 1260(2) defines an “Internet site” as a collection of independent materials expressed in objective form and systematized in such a way that they can be posted on the Internet. “Internet site” was added to the list of subject matter protected under exclusive rights.<sup>14</sup>

### 2. *Contributory Liability for Internet Service Providers (ISPs)*

Amendments to Article 1253 would impose contributory liability on ISPs and other website or social media operators for piracy or copyright infringement on their platforms.<sup>15</sup> The draft law introduces the notion of an “information intermediary” (internet provider), defined as an entity that carries out content transmission on the Internet or provides co-location services. The draft proposes that an internet provider can be exempted from liability if it: (1) did not change the relevant content except when such changes were necessitated by the technical process of transmission; and (2) did not know and did not need to know that certain IP-protected content was used unlawfully by the transmission initiator.<sup>16</sup>

### 3. *Free Licenses*

Amended Article 1280 simplifies software licensing by presenting a contract of a shrink-wrap or click-wrap license type. Except when otherwise agreed, the license will be considered royalty-free and limited to the period of the ownership of the copy of the software. Further amendments to Article 1233 would allow for a royalty-free license, limited in scope to certain explicit uses and valid in Russia for five years, if not otherwise stipulated. If the right-holder has previously granted a paid license for the same scope of rights, it may not grant this free license.

### 4. *Domain Names as Trademarks*

Currently, Article 1483(9)(3) provides that a trademark cannot be registered if it is identical to a domain name, the right to which arose before the priority date of the trademark. Amendments would exclude domain names as a possible ground for refusal of trademark registration.

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[*Amendments to Intellectual Property*], STATE DUMA COMM. ON CIVIL, CRIMINAL, ARBITRATION & PROCEDURAL LAW (Apr. 10, 2012), <http://komitet2-10.km.duma.gov.ru/site.xp/053048124054050054.html>.

14. Draft Amendments, *supra* note 12, art. 1260(2).

15. Part IV of the Civil Code currently imposes liability only for primary or direct infringers who upload unauthorized content onto the Internet. See, e.g., GK RF pt. 4, *supra* note 10, arts. 1229.1, 1270.11.

16. Draft Amendments, *supra* note 12, art. 1253. Similarly, social media operators will escape liability only if: (a) they did not and could not know that the use of the information by the user was unlawful, and (b) upon receipt of written notice from the copyright owner, they took timely measures to stop the infringement. *Id.*

## D. SIGNIFICANT COURT DECISIONS

In a series of decisions, Russia's largest social networking site, vKontakte, was held liable for copyright infringement based on its unauthorized distribution of music and other content through vKontakte's built-in applications.<sup>17</sup> These decisions put into practice the contributory liability concept now reflected in the Draft Amendments; however, it is unclear whether the small damages award imposed against vKontakte (approximately US \$7000, despite an original claim for millions) will have any long-term deterrent effect on internet service providers (ISPs) or other internet operators. Notably, as a result of the extensive litigation, vKontakte changed its user functions and amended its policies to prevent potential copyright infringement by its subscribers.

In April, the Supreme Arbitrazh Court found in favor of Swiss luxury watch giant Richemont in a landmark trademark suit.<sup>18</sup> Ritter Gentlemen, a Russian company, had registered two of Richemont's famous trademarks, VACHERON and CONSTANTIN, in its own name in Russia and used them to sell clothing. ROSPATENT initially declined Richemont's request to cancel Ritter's trademarks, on the basis that Russian consumers were not misled because clothing differed from watches. In June, the Federal Supreme Court disagreed, recognizing that trademarks can be protected across borders and across seemingly unrelated classes of goods.<sup>19</sup>

## II. Arbitration Clauses

Unilateral option dispute resolution clauses (UOCs), also known as asymmetric clauses or alternative hybrid arbitration clauses, are commonly included in commercial contracts between Russian and foreign counterparties, particularly in the context of financing agreements. UOCs grant one party (in the financing context, the lender or facility agent) the option to bring a claim against the counterparty (usually Russian) either by arbitration in a designated tribunal or litigation in any court of competent jurisdiction, but limit the other party to choosing only arbitration. UOCs are intended to force a Russian counterparty to submit to arbitration in order for the non-Russian party to avoid proceedings in the unreliable Russian courts (or from having to enforce a foreign court judgment in Russia).

On June 19, 2012, the Supreme Arbitrazh Court ruled that UOCs are invalid under Russian law because they deprive a party of the right to litigate. The underlying dispute arose between ZAO Russkaya Telefonnaya Kompaniia (RTK), a Russian mobile operator, and a Russian subsidiary of Sony Ericsson (Sony Russia).<sup>20</sup> RTK and Sony Russia were parties to a contract governed by English law for the purchase and sale of mobile telephones. The agreement provided that all disputes would be resolved through arbitration

17. See, e.g., *Gala Records против vKontakte* [Gala Records v. vKontakte], No. A56-16627/2011 (Arbitrazh Ct. of St. Petersburg) (Oct. 15, 2012); *ПК Монолит против vKontakte* [PC Monolith v. vKontakte], No. A56-56488/2011 (13th Arbitrazh Court of Appeals) (May 30, 2012).

18. *Richmont Int'l, C.A. против ФПС. обслуживание по интеллектуальной собственности* [Richmont Int'l, S.A. v. Fed. Serv. for Intellectual Prop.], *VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA RF* [VESTN. VAS], Apr. 24, 2012.

19. *Id.*

20. *Русская телефонная компания против Sony Ericsson Mobile Communications России* [Russian Telephone Company v. Sony Ericsson Mobile Communications Russ.], *VESTNIK VYSSHEGO ARBITRAZHNOGO SUDA RF* [VESTN. VAS], June 19, 2012 [hereinafter Decision 1831/12].

in London under the rules of the International Chamber of Commerce, and also granted Sony Russia, but not RTK, the right to bring a claim in any other court of competent jurisdiction.<sup>21</sup> Nevertheless, RTK filed suit in the Moscow Arbitrazh Court, alleging that the mobile phones furnished by Sony Russia under the contract were of inferior quality. On July 8, 2011, the court, citing the arbitration clause in the contract, declined to hear RTK's claim. The Ninth Arbitrazh Appellate Court on September 14, 2011<sup>22</sup> and the Federal Arbitrazh Court of the Moscow District on December 5, 2011<sup>23</sup> subsequently affirmed this decision. But the Supreme Arbitrazh Court overturned the appellate court decisions, and referred the dispute back to the Moscow Arbitrazh Court for reconsideration.<sup>24</sup>

The Supreme Arbitrazh Court held that UOCs are void, but it is unclear whether UOCs are invalid in their entirety or only to the extent that they allow one party, but not the other, to file a dispute in court. Most Russian lawyers seem to be interpreting the ruling to mean that UOCs are invalid in their entirety, so that despite a UOC in a contract, either party may bring a claim in any court of competent jurisdiction and neither is limited to arbitration.

All Russian court decisions upholding UOCs are now open to challenge in, and to reconsideration by, the courts based on the principle of "new circumstances" (*po novym obstoyatelstvam*).<sup>25</sup> Currently, it appears that a foreign company can avoid Russian courts only by providing for exclusive resolution of disputes through international arbitration, with neither party able to file suit in court. Companies with existing agreements containing a UOC are strongly advised to amend the relevant provisions to ensure that they remain enforceable under Russian law. One exception may be where contracts are concluded with Russian companies that are either listed on a stock exchange abroad or have significant assets outside Russia, wherein it may be advisable to retain UOCs in order for the foreign counterparties to choose enforcement of the clause outside Russia.

### III. Anticorruption

During his presidency (May 2008 to May 2012), Dmitry Medvedev made anticorruption a central pillar of his strategy to reform and modernize Russia. Several developments in this area occurred in 2012, including new legislation, movement toward greater enforcement, and new initiatives. But it remains to be seen if current President Vladimir Putin will maintain the focus on anticorruption efforts.

21. *Id.* at 3.

22. Русская телефонная компания против Sony Ericsson Mobile Communications России [Russian Telephone Company v. Sony Ericsson Mobile Communications Russ.], No. A40-49223/11-112-43 (Ninth Arbitrazh Appellate Court) (Sept. 14, 2011).

23. Русская телефонная компания против Sony Ericsson Mobile Communications России [Russian Telephone Company v. Sony Ericsson Mobile Communications Russ.], No. A40-49223/11-112-43 (Fed. Arbitrazh (Commercial) Court Moscow Dist.) (Dec. 5, 2011).

24. Decision 1831/12, *supra* note 20, at 8.

25. ARBITRAZHNO-PROTSESSUAL'NYI KODEKS ROSSIYSKOY FEDERATSII [APK RF] [Code of Arbitration Procedure] ch. 37 (Russ.), available at [http://arbitratus.ru/english/rf\\_codes/arbitration.shtml](http://arbitratus.ru/english/rf_codes/arbitration.shtml).

## A. FEDERAL LAW 97-FZ

In May 2011, then-President Medvedev signed Federal Law No. 97-FZ (Law 97-FZ),<sup>26</sup> expanding Russian anticorruption law to cover bribes paid to foreign government officials and those paid by intermediaries. Law 97-FZ also substantially increased fines for bribery offenses<sup>27</sup> and lengthened the statute of limitations to six years for bribery committed by legal entities.<sup>28</sup> Moreover, it expanded the definition of “bribe” to include the transfer of “other property rights.”<sup>29</sup> Law 97-FZ further added two defenses to a charge of bribery: (1) reporting to and cooperating with authorities regarding the crime, and (2) extortion.<sup>30</sup> Finally, Law 97-FZ created new procedures facilitating cooperation with foreign law enforcement authorities on cross-border investigations.<sup>31</sup>

Based on the reforms of Law 97-FZ, the OECD Working Group on Bribery invited Russia to join the OECD Anti-Bribery Convention in May 2011, and Russia acceded to the Convention in February 2012.<sup>32</sup>

## B. SUPREME COURT INTERPRETATION OF BRIBERY

In May 2012, the Russian Supreme Court refined the legal definition of bribery with a Resolution<sup>33</sup> that distinguished between two types of bribery, one punishable by up to three years imprisonment and the other up to seven years. The first entails a government official taking, or refraining from taking, an action within his or her official duties in exchange for a bribe; in other words, actions permissible under Russian law but facilitated through the provision of a bribe.<sup>34</sup> The second, more serious type of bribery involves a public official engaging in activity or inactivity not permitted under Russian law; for example, opening a criminal case under false pretenses.<sup>35</sup>

26. Federal'nyj zakon Rossiyskoy Federacii ot 4 maja 2011 g. N 97-FZ “O vnesenii izmenenij v Ugolovnyj kodeks Rossiyskoy Federacii i Kodeks Rossiyskoy Federacii ob administrativnyh pravonarushenijah v svyazi s sovershenstvovaniem gosudarstvennogo upravlenija v oblasti protivodejstvija korrupcii” [Federal Act on May 4, 2011 N 97-FZ On Amendments to the Criminal Code and the Code of Administrative Offences in Connection With the Improvement of Public Administration in the Field of Anti-Corruption], Ros. Gaz. May 6, 2011 (Russ.), available at <http://www.rg.ru/2011/05/06/korrupt-dok.html>.

27. *Id.* art. 1.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* art. 2.

32. *Russia Joins OECD Anti-Bribery Convention*, OECD (Feb. 17, 2012), <http://www.oecd.org/russia/russia-joinsocedanti-briberyconvention.htm>.

33. Postanovleniye Plenuma Verkhovnogo Suda RF “O vnesenii izmeneniâ v postanovlenie Plenuma Verkhovnogo Suda Rossiyskoy Federacii ot 10 fevralâ 2000 g. N 6 \“O sudebnoj praktike po delam o vzâtoënîestve i kommerèeskom podkupe”” ot 22 Maya 2012 g. N 7 g. [No. 7 of the Russian Federation Supreme Court Resolution on Amending the Resolution of the Russian Federation Supreme Court Resolution on February 10, 2000 No. 6 on Judicial Practice in Cases of Bribery and Commercial Bribery of May 22, 2012], Ros. Gaz. May 30, 2012 (Russ.) [hereinafter Supreme Court Resolution].

34. *Id.*

35. *Id.*

## C. ENFORCEMENT OF ANTICORRUPTION LAWS

Despite these developments in anticorruption law, the level of enforcement has actually decreased.<sup>36</sup> Nonetheless, several high profile prosecutions first initiated during President Medvedev's term resulted in convictions in 2012.<sup>37</sup> In one case, a Ministry of Health official was sentenced to six years' imprisonment after coercing the director of a regional medical institute to purchase medical equipment at an excessive markup so that the official could receive a kickback.<sup>38</sup> In another case, the Head of the Military Medical Administration of the Ministry of Defense was sentenced to eight years in prison for receiving a bribe related to the acquisition of a CT scanner.<sup>39</sup>

Thus, Russia's record on anticorruption in 2012 was mixed, and whether anticorruption remains a central goal of the Putin administration is not yet clear. In October 2012, one of Putin's most loyal followers, Anatoly Serdyukov of the Ministry of Defense, was forced to resign over a developing graft scandal encompassing several Ministries and alleging corruption in the space program.<sup>40</sup> The current investigations have not yet led to prosecutions.

Russia's future anticorruption efforts may be further complicated by the enactment of the "Magnitsky Act" in the U.S. Congress as part of normalizing trade relations with Russia.<sup>41</sup> This measure, strongly criticized by Russia, requires the United States to place financial and visa restrictions on a list of officials associated with the death of Sergei Magnitsky, an anticorruption lawyer who uncovered a US \$230 million tax refund fraud involving the Ministry of Taxation.<sup>42</sup> Russian officials have denounced the law as interfering with its domestic affairs, but Russian human rights workers have lauded the statute and noted that it has not been uncommon in past years for Russian whistleblowers and anticorruption activists to be arrested, imprisoned, and prosecuted on questionable charges, and to die under mysterious circumstances.<sup>43</sup>

36. See Vladislav Kulikov, *Vzâtiki gladki V Našej Strane Davat' Vzâtiki Gorazdo Opasnee, čem Brat'* [Bribes Smooth: In Our Country, Bribes Are Much More Dangerous Than Taking Right] ROS. GAZ. (May 4, 2012, 1:00 PM), <http://www.rg.ru/2012/05/04/vzyatki.html>. In 2010, 2,185 individuals were convicted of receiving bribes; in 2011 only 1,992 were convicted. *Id.* Interestingly, 2,279 were convicted of giving bribes, even though in principle the number of bribes given and received should be identical. *Id.* See also Sergey Gusev, *Yury Chaika Nedovolen Neeffektivnoi Borboi s Korruptsiei* [Yuri Chaika Unhappy About Ineffective Anti-Corruption], RBC DAILY (Aug. 8, 2012), <http://www.rbcdaily.ru/2012/08/08/society/562949984483074> (the drop-off in enforcement was significant enough to provoke a disapproving reaction from Yuri Chaika, the Prosecutor General of Russia, in 2012).

37. *Working Meeting with Presidential Aide and Chief of the Presidential Control Directorate Konstantin Chuychenko*, PRESIDENT OF RUSS. (Aug. 10, 2010, 2:30 PM), <http://eng.kremlin.ru/news/752>.

38. Yuri Senatorov, *Sud Osenil Pogreshnost' pri Pokupke Tomografa* [The Court Assessed the Error When Buying Tomograph], KOMMERSANT (Oct. 19, 2012), <http://www.kommersant.ru/doc/2047721>.

39. Oleg Rubnikovich, *Verkhovny Sud Ne Vnyal Trekhsatoronnei Kassatsii* [The Supreme Court did not Heed the Tripartite Appeal], KOMMERSANT (Oct. 17, 2012), <http://www.kommersant.ru/doc/2046235>.

40. Will Englund, *Russia Steps Up Graft Enforcement as U.S. House Weighs Related Bill*, WASH. POST, Nov. 15, 2012, at A13.

41. Sergei Magnitsky Rule of Law Accountability Act, H.R. 4405, 112th Cong. (2012) (enacted) (named after the Russian anticorruption lawyer who died in prison in 2009 after allegedly being tortured by Russian officials).

42. The U.S. Congress passed the Magnitsky Act in December 2012. Jeremy W. Peters, *U.S. Senate Passes Russian Trade Bill, With a Human Rights Caveat*, N.Y. TIMES, Dec. 7, 2012, at B4.

43. Julia Pettengill, *Russia's WTO Entry a Chance to Push Human Rights*, WORLD AFFS. J., <http://www.worldaffairsjournal.org/article/russias-wto-entry-chance-push-human-rights> (last visited Feb. 26, 2013).



On December 28, 2012, President Putin signed a law banning U.S. citizens from adopting Russian orphans. Over the last twenty years, families in the United States have adopted over 60,000 orphans from Russia.<sup>44</sup> The new ban on adoption by U.S. citizens is widely understood to be retaliation to U.S. congressional approval of the Magnitsky Act.<sup>45</sup> Vladimir Ovsyannikov, a member of the Duma, explained that “[i]t is a question of pride. Our sovereignty has been threatened [by the Magnitsky Act], and we need to hit back. Maybe it sounds dumb, but it’s part of the Russian mentality.”<sup>46</sup>

In 2013, for the first time, Russia’s anticorruption enforcement record will be subjected to international scrutiny when the OECD releases its report on Russia’s compliance with the Anti-Bribery Convention.

#### IV. Foreign Agents Act

The new Foreign Agents Act took effect on November 21, 2012.<sup>47</sup> As with several other acts recently passed by the Duma, the speed of its adoption (two weeks from draft to adoption) was remarkable in the history of the Russian parliament. The proposed law was written by President Putin’s ruling party, United Russia, for the purposes of “ensuring transparency and publicity in the activities of non-profit organizations . . . and . . . organiz[ing] due control over the work of nonprofit organizations performing political activities in the Russian Federation and funded from foreign sources.”<sup>48</sup> While United Russia’s amendments to the draft were passed, none of the amendments proposed by opposition factions were accepted.<sup>49</sup> Several entities associated with the government, including the Public Chamber and the Presidential Council on the Development of Civil Society and Human Rights, roundly criticized the draft,<sup>50</sup> but virtually no public debate of

44. *Magnitsky Case: Putin Signs Russian Ban on US Adoptions*, BBC NEWS (Dec. 28, 2012, 9:54 AM), <http://www.bbc.co.uk/news/world-europe-20857068>.

45. See Simon Shuster, *Why Has Moscow Passed a Bill to Ban U.S. Adoption of Russian Orphans?*, TIME WORLD (Dec. 20, 2012), <http://world.time.com/2012/12/20/why-has-moscow-passed-a-law-to-ban-u-s-adoption-of-russian-orphans/>.

46. *Id.*

47. Federal’nyi Zakon RF o Federal’nyj zakon Rossiyskoy Federacii ot 20 iûlâ 2012 g. N 121-FZ “O vnesenii izmenenij v otdel’nye zakonodatel’nye akty Rossiyskoy Federacii v èasti Regulirovaniâ Deâtel’nosti Nekommerèeskikh Organizacij, Vypolnâûsîh Funkcii Inostrannogo Agentâ” [Federal Law of the Russian Federation on Introducing Amendments to Certain Legislative Acts of the Russian Federation as to the Regulation of Activities of Nonprofit Organizations Performing the Functions of a Foreign Agent (the Foreign Agents Act)], SOBRANIE ZAKONODATEL’SIVA ROSSIJSKOI FEDERATSII [SZ RF] [Russian Federation Collection of Legislation] 2012, No. 121-FZ (Russ.).

48. O Vnesenii Izmenenij v Otdel’nye Zakonodatel’nye Akty Rossiyskoy Federacii v èasti Regulirovaniâ Deâtel’nosti Nekommerèeskikh Organizacij, Vypolnâûsîh Funkcii Inostrannogo Agentâ [Introductory Note on Introducing Amendments to Certain Legislative Acts of the Russian Federation as to the Regulation of Activities of Nonprofit Organizations Performing the Functions of a Foreign Agent], June 29, 2012 (Russ.), available at <http://asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=102766-6&02>.

49. See Foreign Agents Act, *supra* note 47 (amendments recommended by Duma Comm. on Public Associations and Religious Organizations).

50. Obesestvennoj palaty Rossiyskoy Federacii po rezul’ tatam obesestvennoj èkspertizy proekta federal’nogo zakona No.102766-6 [Assessment of the Draft Law FZ No. 102766-6], PUB. CHAMBER OF THE RUSS. FED’N, <http://oprfr.ru/1449/1537/views/1694/newsitem/18932> (last visited Feb. 26, 2013); Zaâvlenie èlenov Soveta po povodu zakonoproektov No.102766-6 [Statement of the Presidential Council on the Development of Civil Society and Human Rights of Law FZ No. 102766-6], PRES. COUNCIL ON DEV. OF CIVIL SOC’Y & HUM. RTS., <http://>

the draft was held, deviating starkly from the practice introduced under President Medvedev.

In the view of many Russian nonprofit sector professionals and experts, the bill will not only fail to achieve its declared goals, but it will also create new hurdles for nonprofit activities necessary for any society claiming to be civil, open, and democratic. In addition, there are serious doubts regarding the constitutionality of some of the act's provisions.

The Foreign Agents Act creates a special regulatory regime for Russian nonprofit organizations that "perform the functions of a foreign agent."<sup>51</sup> The average Russian interprets the phrase "foreign agent" (used during the Communist era) to mean "spy" or "covert enemy acting in Russia in the interests of other countries,"<sup>52</sup> and thus the label given to these nonprofits is highly inflammatory. These organizations are required to register in a special roster maintained by the Ministry of Justice, which entails additional responsibilities such as submitting to the Ministry quarterly financial and semi-annual narrative reports, mandatory annual audits, and publication of the submitted reports. The organizations are subject to "checks" (external audits) as often as once a year (other nonprofits are subject to checks once every three years). Finally, "any materials published by a nonprofit organization performing the functions of a foreign agent and/or distributed by it through the media and/or . . . on the Internet . . . must carry a notification that these materials were published and/or distributed by a non-profit organization performing the functions of a foreign agent."<sup>53</sup>

Non-compliance may result in the Ministry suspending the nonprofit for up to six months (which is appealable in court). The Act introduces "administrative liability" for both nonprofits and their executives personally in the form of serious fines.<sup>54</sup> Finally, an addition to the Penal Code provides for penalties for "gross failure to perform the duties to provide documents required for inclusion in . . . the roster of nonprofit organizations performing the functions of a foreign agent," which is punishable by up to two years imprisonment.<sup>55</sup>

A nonprofit is subject to the Act if it meets two criteria: (1) it receives or plans to receive money or other assets from a foreign state or its governmental bodies, international and foreign organizations, foreign citizens or stateless persons, persons authorized by the foregoing, or from Russian legal entities receiving money and other assets from the foregoing (i.e., from any source outside of Russia);<sup>56</sup> and (2) it participates (or plans to participate) in "political activities" within the territory of Russia.<sup>57</sup> "Political activities" are defined broadly as participation, including through funding, in the organization and operation of

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president-sovet.ru/council\_decision/council\_statement/zayavlenie\_chlenov\_soveta\_po\_povodu\_zakonoproektov\_102766\_6.php (last visited Feb. 26, 2013).

51. Foreign Agents Act, *supra* note 47, art. 2 (translated from Russian by the authors).

52. Yulia Ponomareva, *NGOs Say They Will Fight Law Branding Them 'Foreign Agents'*, RUSS. NOW (Nov. 28, 2012), [http://rbth.ru/articles/2012/11/21/ngos\\_to\\_fight\\_law\\_branding\\_them\\_foreign\\_agents\\_20301.html](http://rbth.ru/articles/2012/11/21/ngos_to_fight_law_branding_them_foreign_agents_20301.html).

53. Foreign Agents Act, *supra* note 47, art. 2 (translated from Russian by the authors).

54. *Id.* art. 3.

55. *Id.*

56. *Id.* art. 2.

57. *Id.*

political actions in order to influence governmental decision-makers, with a goal of changing the policies they implement as well as public opinion.<sup>58</sup>

Religious and state-run NGOs are exempt from the Act, as are those active in “the field[s] of science, culture, arts, public health, . . . social support and protection of citizens, protection of maternity and childhood, social support of the disable[d], propaganda of healthy life style, sports and fitness, protection of flora and fauna, charitable activities, and activities in the field of promoting charity and voluntarism.”<sup>59</sup> It is clear from this list of exemptions that the Act targets nonprofits promoting reform and policy change in important spheres such as human rights, fair elections, and local self-government, particularly those nonprofits receiving funding from the U.S. Agency for International Development, which was forced to halt operations in Russia in the summer of 2012 by order of the Russian government.<sup>60</sup>

Russian lawmakers repeatedly argued that the Act was modeled on, and had the same effect as, the U.S. Foreign Agents Registration Act (FARA).<sup>61</sup> However, this reference is inaccurate because FARA only requires registration by persons or organizations that are acting “at the order, request, or under the direction or control, of” a foreign citizen or government or someone controlled by a foreign citizen or government<sup>62</sup> and that meets other additional criteria. A U.S. organization’s receipt of funding from a foreigner is never sufficient by itself to render the organization a “foreign agent” under FARA. The Russian Foreign Agents Act, however, is triggered solely by the receipt of even miniscule funding from abroad. The Russian law concept of “agency,” which is very similar to the U.S. legal concept, has essentially been altered to render certain nonprofits “agents” simply for receiving a donation from a foreigner, regardless of whether the nonprofit is controlled or directed by the donor.

Some Russian legal experts and NGOs believe the Foreign Agents Act violates the Constitution. The requirements imposed by the Act are not significantly more onerous than existing reporting requirements (raising doubts about the necessity of the Act), but voluntary annual audits, requiring NGOs to state that they “perform the functions of a foreign agent,”<sup>63</sup> may violate the Russian Constitution, which guarantees that one cannot “be forced to express his thoughts and convictions or to deny them.”<sup>64</sup> Forcing (under the threat of potential criminal liability) an organization or person acting on its behalf to self-identify as a “foreign agent” could be interpreted as forcing them to admit to espionage or treason, because the term “foreign agent” is largely understood as such.

There are hundreds of nonprofits in Russia pursuing various socially valuable goals. Because the Russian philanthropic sector is in its infancy, domestic funding is largely unavailable for many of these organizations. The fact that a foreign donor provides funding for a project in the “political” domain (broadly defined by the Act) does not mean that the foreign donor is controlling or directing the grantee’s actions. But the Act implies that any nonprofit is the agent of its funders, presumably even if such funder is the government

58. *Id.*

59. *Id.* President Putin introduced this amendment himself.

60. Ponomareva, *supra* note 52, at H3.

61. Foreign Agents Registration Act, 22 U.S.C. §§ 611-21 (2006) (as amended).

62. *Id.* § 611(c)(1).

63. Foreign Agents Act, *supra* note 47, art. 2.

64. KONSTITUTSIYA ROSSIYSKOY FEDERATSII [KONST. RF] [CONSTITUTION] art. 29 (Russ.).

of the Russian Federation or a Russian philanthropist. In other words, “independent” NGOs seem not to exist any longer in Russia.

## V. Ukraine

Ukraine offers many attractions for prospective investors, such as forty-six million consumers, a highly educated populace, a skilled labor force, strategic geography, and a developed infrastructure. The country remains highly attractive to energy sector investors<sup>65</sup> and agricultural companies.<sup>66</sup> It has adopted reforms to facilitate closer relations with the EU and, in 2012, made starting a business significantly easier.<sup>67</sup> GDP per capita is growing, and there was low inflation in 2011 and 2012.<sup>68</sup> On the other hand, the budget deficit is growing,<sup>69</sup> and several international banks and financial institutions have pulled out of the country.<sup>70</sup> It remains very difficult to obtain construction permits, register property, or pay taxes.<sup>71</sup> Moreover, widely criticized Ukrainian parliamentary elections in 2012 and political turmoil surrounding the imprisonment of former Prime Minister Yulia Tymoshenko have hurt Ukraine’s prospects for foreign investment.<sup>72</sup>

In 2012, Ukraine passed a series of laws impacting international investors and attorneys representing clients in Ukraine, which are detailed below.

### A. SIMPLIFIED INVESTMENT PROCEDURES

Ukraine introduced a “one-window principle” for investment projects,<sup>73</sup> aimed at supporting investment projects by simplifying and making transparent the procedures for co-operation between investors and state authorities. Regional centers of investment and development were introduced to oversee and manage a “one-stop shop” for preparing and implementing investment projects. These centers provide a broad range of free services in connection with investment projects.<sup>74</sup>

65. See John Dizard, *Ukraine is Ripe for US Gas Exploration*, FIN. TIMES (Nov. 25, 2012), <http://www.ft.com/cms/s/0/3c279010-0d6a-11e2-97a1-00144feabdc0.html#axzz2GUNu4ljZ>.

66. Roman Olearchyk, *US Crop Producers Eye Ukraine Market*, FIN. TIMES (Nov. 25, 2012), <http://www.ft.com/intl/cms/s/0/d5af6efa-3570-11e2-bf77-00144feabdc0.html>.

67. THE WORLD BANK & THE INT’L FIN. CORP., *DOING BUSINESS 2013: SMARTER REGULATIONS FOR SMALL AND MEDIUM-SIZE ENTERPRISES* 144, 202 (2013) (showing improvement from 116th in the world to 50th in the ease of starting a business).

68. Olga Pogarska & Edilberto L. Seguro, *Ukraine Macro-Economic Situation*, SIGMA BLEYZER/BLEYZER FOUND. NEWSLETTER, Oct. 2012, available at <http://www.usubc.org/site/sigmableyzer-macroeconomic-reports/ukraine-macroeconomic-situation-october-2012>.

69. *Id.*

70. Ruth Green, *Special Report: Ukraine*, THE LAW. (Dec. 3, 2012), <http://www.thelawyer.com/1015681.article>.

71. THE WORLD BANK, *supra* note 67, at 202.

72. Green, *supra* note 70.

73. Про підготовку та реалізацію інвестиційних проектів за принципом “єдиного вікна” [Law On Preparation and Implementation of Investment Projects under the “One Window” Principle] VIDOMOSTI VERKHOVNOI RADY UKRAINY [BD] [GAZETTE OF THE VERKHOVNA RADA] 2011, No. 11, art. 3 (Ukr.).

74. *Id.* art. 1.

## B. STOCK MARKET AND SECURITIES

Amendments to the Securities and Stock Market Law<sup>75</sup> took effect on May 2, 2012, giving the National Commission on Securities and Stock Exchanges (NCSEC) the right to revoke the license of a professional participant in the securities market (*e.g.*, securities trader, depository, asset manager, or stock exchange) if the NCSEC determines that any shares in such participant are directly or indirectly held by an individual convicted of a criminal offense involving property, commercial interests, or official activity. The new law applies regardless of whether the individual is a resident of Ukraine or a foreign country, or whether she or he was convicted in Ukraine or abroad. The amendments could lead to a situation in which any professional participant in the securities market may be deprived of her or his license as a result of the acquisition of its shares by a convicted individual.

## C. ACCESSING JUSTICE VIA INTERNET

In October 2012, the Ukrainian judicial system launched a new electronic document exchange system that allows litigants to file documents via the Internet. Temporary regulations were approved to support the electronic document exchange, including the creation of procedural documents in paper and electronic form. Launched by a preliminary group of courts in October, the project will add the remaining courts and will create a Unified Judicial Information System, as mandated by the Council of Judges of Ukraine in February 2008.<sup>76</sup>

## D. LIMITS ON CASH TRANSACTIONS

The new Law on Non-Cash Payments<sup>77</sup> allows the National Bank of Ukraine (NBU) to receive commitments regarding the regulation of payment system registration and e-money in accordance with international standards, thus eliminating a gap in the law governing payment systems. Before the law took effect, cash transactions were widely acceptable and almost exclusive for small businesses, but now the NBU has the authority to set maximum limits on cash payments for goods and services to individuals and businesses. Transactions over the limit may be performed only by bank transfer. This new payment

75. Закон про внесення змін до закону про цінні папери та фондовий ринок щодо фінансового моніторингу професійних учасників фондового ринку [Law Amending the Law on Securities and Stock Market as to the Financial Monitoring of Professional Stock Market Players] VIDOMOSTI VERKHOVNOI RADY UKRAINY [BD] [GAZETTE OF THE VERKHOVNA RADA] 2012, No. 22, at 211 (Ukr.), *available at* <http://zakon2.rada.gov.ua/laws/show/3831-17>.

76. Council of the Judges of Ukr., Decision No. 38 (Feb. 29, 2008) (Ukr.), *available at* <http://www.court.gov.ua/969076/45742658258/>.

77. Про внесення змін до деяких законодавчих актів України щодо функціонування платіжних систем і розвитку безготівкових платежів [Amendments to Legislative Acts Regarding the Functioning of Payment Systems and the Development of Non-Cash Payments] VIDOMOSTI VERKHOVNOI RADY UKRAINY [BD] [GAZETTE OF THE VERKHOVNA RADA] 2012, No. 5284-VI (Ukr.), *available at* <http://zakon2.rada.gov.ua/laws/show/5284-17>.

system is intended to reduce the “shadow economy” and increase control of the Department of Revenue Services over all major transactions.<sup>78</sup>

#### E. OTHER DEVELOPMENTS

Among numerous other innovations in 2012 were important changes in the Tax Code,<sup>79</sup> introducing a simplified tax system; a long-awaited Draft Labor Code<sup>80</sup> aimed at balancing the interests of employers and employees; and a new Customs Code<sup>81</sup> providing heavier penalties for custom regulation violations.

### VI. Uzbekistan

Uzbekistan adopted important legislative changes to its foreign direct investment, private property, competition, and family business laws.

#### A. PROTECTION OF FOREIGN DIRECT INVESTMENTS (FDI) AND PRIVATE PROPERTY

Uzbekistan enacted two laws affecting foreign investors and their property rights: Presidential Decree No. 4434 (the FDI Decree)<sup>82</sup> and the Law on Protection of Private Property and Guarantees of Property Rights (the Property Law).<sup>83</sup>

The FDI Decree offers security to foreign investors in three ways. First, during the first decade after their registration date, new companies with foreign investments exceeding US \$5 million may pay certain taxes based on the laws existing as of the registration date, regardless of subsequent legislative changes.<sup>84</sup> Second, construction of necessary external engineering and communication networks in investment projects worth more than US \$50 million, with a foreign share over 50 percent, will be carried out using government budget funds and other domestic financing sources.<sup>85</sup> Third, the 2005 Presidential Decree No. 3594 was expanded by adding to the list of preferential industries. Companies with FDI in the following industries are now exempt from certain taxes: petrochemical, medical, packaging production, renewable energy, coal, automotive and metalworking, industrial microbiology, glass and porcelain production, and toy production.

78. Nikolai Maksymchuk,

Игорь Прасолов: не приходится надеяться, что фондовый рынок начнет творить чудеса [*Ihor Prasolov: Do Not Hope that the Stock Market Will Do Wonders*], KOMMERSANT-UKRAINE (Oct. 17, 2012), <http://www.kommersant.ua/doc-rss/2046334>.

79. Податковий кодекс України [Tax Code of Ukraine], Nos. 13-14, 15-17, at 112 (Ukr.), available at <http://zakon2.rada.gov.ua/laws/show/%D0%BD%D0%B0%D0%BB%D0%BE%D0%B3%D0%BE%D0%B2%D0%B8%D0%B9%20%D0%BA%D0%BE%D0%B4%D0%B5%D0%BA%D1%81>.

80. Проект Трудового кодексу України [Draft Labor Code] 2009, No. 1108 (Ukr.) (submitted to the Verkhovna Rada of Ukraine in the second reading), available at [http://w1.c1.rada.gov.ua/pls/zweb\\_n/webproc4\\_1?pf3511=30947](http://w1.c1.rada.gov.ua/pls/zweb_n/webproc4_1?pf3511=30947).

81. Митний кодекс України [Customs Code of Ukraine], No. 4495-VI (Ukr.), available at <http://zakon2.rada.gov.ua/laws/show/4495-17>.

82. Presidential Decree No. 4434, Additional Measures to Stimulate Foreign Direct Investments (Apr. 10, 2012), [http://www.lex.uz/Pages/GetAct.aspx?lact\\_id=1994789&search\\_text=4434\(Uzb.\)](http://www.lex.uz/Pages/GetAct.aspx?lact_id=1994789&search_text=4434(Uzb.)).

83. Law on Protection of Private Property and Guarantees of Property Rights, No. 336-URQ, Sept. 24, 2012 (Uzb.), available at [http://senat.uz/uz/laws/urq-336\\_24.09.2012.html](http://senat.uz/uz/laws/urq-336_24.09.2012.html).

84. Presidential Decree No. 4434, *supra* note 82.

85. *Id.*

The new Property Law provides that private property (personal, real estate, and IP rights)<sup>86</sup> is inviolable and protected by the state.<sup>87</sup> These rights are termless and apply to foreign nationals and stateless persons as well as Uzbek nationals.<sup>88</sup> The State guarantees their protection and full compensation.<sup>89</sup> This law also provides that in any dispute with governmental authorities, any confusion or ambiguity in law related to the protection of property rights is to be interpreted in favor of the property owner.<sup>90</sup> Governmental decrees contrary to the Property Law are deemed invalid.<sup>91</sup> Further, property cannot be nationalized or expropriated without full compensation based on current market value,<sup>92</sup> and the owner of real estate that is subject to nationalization and demolition is required to be fully compensated before demolition occurs.<sup>93</sup> Finally, private property formed after the privatization of state property is inviolable, and results of the prior privatization are not appealable.<sup>94</sup> It remains to be seen how these laws will be enforced in Uzbekistan, which has a history of seizing property of local and foreign investors with no (or lower than market value) compensation.<sup>95</sup>

## B. COMPETITION LAW

The Law on Competition, effective January 7, 2012 (the 2012 Law),<sup>96</sup> replaced the 1996 Law on Competition and the Restriction of Monopolistic Activity in the Commodity Markets (the 1996 Law), and is intended to modernize and consolidate competition law in a single statute.<sup>97</sup> The 2012 Law applies to the activities of companies, individuals, and governmental agencies affecting competition in the commodities and financial markets of Uzbekistan, conducted inside Uzbekistan<sup>98</sup> as well as outside,<sup>99</sup> although the scope of extraterritorial application and enforcement mechanisms are unclear. The 2012 Law prohibits: (1) abuse of “dominant position” (Article 10); (2) coordinated actions and agreements restricting competition (Article 11); (3) anticompetitive agreements with or acts of governmental entities (Article 12); and (4) unfair competition (Article 14). “Dominant position” is defined as (1) more than 50 percent market share; or (2) less than 50 percent but more than 35 percent market share and meeting certain other conditions.<sup>100</sup> Actions that constitute “abuse of dominant position” include withholding goods from cir-

86. Law on Protection of Private Property and Guarantees of Property Rights, No. 336-URQ, arts. 4, 17, 19 (Uzb.).

87. *Id.* art. 2.

88. *Id.* art. 25.

89. *Id.* arts. 5-6, 11.

90. *Id.* art. 7.

91. *Id.* art. 9.

92. *Id.* art. 17.

93. *Id.* art. 19.

94. *Id.* art. 24.

95. U.S. DEP'T OF STATE, BUREAU OF ECON. & BUS. AFFAIRS, 2012 INVESTMENT CLIMATE STATEMENT – UZBEKISTAN (2012), available at <http://www.state.gov/e/eb/rls/othr/ics/2012/191261.htm>.

96. Law on Competition, No. 319-URQ, Jan. 6, 2012 (Uzb.), available at [http://senat.uz/uz/laws/urq-319\\_06.01.2012.html](http://senat.uz/uz/laws/urq-319_06.01.2012.html).

97. *Id.* art. 38 (listing all laws and regulations that were replaced by the 2012 Law).

98. The 2012 Law does not apply to IP rights except in limited circumstances under Article 13 prohibiting unfair competition. See *id.* art. 13.

99. *Id.* art. 3.

100. *Id.* art. 6. Notably, this decreased the 1996 Law's “dominant position” threshold of 65 percent.

culation resulting in price increases, setting up “monopoly high” or “monopoly low” prices,<sup>101</sup> and blocking access to or exit from the market.<sup>102</sup> The 2012 Law also contains new provisions prohibiting “coordinated actions and agreements restricting competition,” such as price-fixing and agreements on controlling volume of production or distribution.<sup>103</sup>

Chapter 3 of the 2012 Law regulates tenders, exchange trades, mergers and acquisitions, and purchase of shares or participatory interests. It requires the State Committee’s prior approval of the following: (1) establishment of business entities; (2) mergers and accessions of business entities; and (3) acquisition of shares in the charter capital of Uzbek companies, if the acquirer obtains 35 percent, 50 percent, or 75 percent of shares of a stock company, or 50 percent or two-thirds shares of a limited liability company.<sup>104</sup> Such prior approval is required only when it involves a party with a dominant position or with aggregate assets or annual commercial revenue exceeding 100 times the minimum monthly salary prescribed by law.<sup>105</sup> The State Committee must make its decision in writing within ten calendar days from the date of application for approval.

### C. FAMILY BUSINESSES

As part of the goal to develop family businesses as an important form of small business, Uzbekistan passed the Law on Family Entrepreneurship (the LFE Law), effective on April 27, 2012.<sup>106</sup> The LFE Law provides that members of a family business may choose to incorporate as a “family enterprise”<sup>107</sup>—a separate legal entity that may acquire rights and incur liabilities, own real estate property, and sue or be sued, but whose debts are the personal liability of the family enterprise members.<sup>108</sup> Family enterprises are required to register and establish a charter capital of at least ten times the minimum monthly salary amount prescribed by law.<sup>109</sup>

A family enterprise may hire employees, but the total number of family members and employees may not exceed the annual average number of workers set by laws regulating small businesses.<sup>110</sup> A member of one family enterprise cannot at the same time be a member in another family enterprise.<sup>111</sup> Family members may appoint a head of the family enterprise to represent their interests in relation to third parties.<sup>112</sup> Article 31 allows

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101. *Id.* arts. 7-8.

102. *Id.* art. 10.

103. *Id.* art. 11.

104. *Id.* arts. 17-18.

105. *Id.* art. 17. The current minimum monthly salary is 72,355 Uzbek sums (approximately US \$37). See Presidential Decree No. 4450, On Increasing the Amounts of Minimum Salary, Pensions, Stipends, and Social Benefits (Jul. 5, 2012), available at [http://base.spininform.ru/show\\_doc.fwx?rgn=53022](http://base.spininform.ru/show_doc.fwx?rgn=53022).

106. Law on Family Entrepreneurship, No. 327-URQ, Apr. 26, 2012 (Uzb.), available at [http://senat.uz/uz/laws/urq-327\\_26.04.2012.html](http://senat.uz/uz/laws/urq-327_26.04.2012.html).

107. *Id.* art. 3.

108. *Id.* art. 4.

109. *Id.* arts. 10-11. For the current amount of the minimum salary, see Presidential Decree No. 4450, *supra* note 105.

110. *Id.* art. 4. The number varies based on specific activities but cannot be more than 100. See *Classification of Small Enterprises and Organizations*, FMC (Nov. 10, 2003), [http://fmc.uz/legisl.php?id=class\\_mb](http://fmc.uz/legisl.php?id=class_mb).

111. *Id.* art. 5.

112. *Id.* art. 6.



family enterprises to form unions to protect their rights and interests. A family enterprise is prohibited from producing excisable commodities or engaging in mining or other activities subject to the Uzbek fixed corporate tax or unified tax on agricultural land.

A family enterprise is taxed based on a simplified taxation system and is required to pay social security taxes. After-tax profits are distributed among the members free of income tax. Craft businesses are excused from taxes on profits from the sale of crafts that are specifically approved by the Uzbek Cabinet of Ministers.<sup>113</sup>

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113. *Id.* art. 26. *See also* Presidential Decree No. 4469 (Sep. 6, 2012) (Uzb.) (extending tax break until Jan. 1, 2014), *available at* [http://www.soliq.uz/uz/normative\\_legal\\_acts/decrees\\_of\\_the\\_president\\_of\\_the\\_republic\\_of\\_uzbekistan/](http://www.soliq.uz/uz/normative_legal_acts/decrees_of_the_president_of_the_republic_of_uzbekistan/).

